

ADMINISTRATIVE PANEL DECISION

Adobe Inc. v. Jun Yin

Case No. DCO2022-0027

1. The Parties

The Complainant is Adobe Inc., United States of America, represented by Baker & McKenzie, Colombia.

The Respondent is Jun Yin, China.

2. The Domain Name and Registrar

The disputed domain name <adobe.com.co> is registered with NETIM SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication in English and Spanish to the parties on April 11, 2022 regarding the language of the proceeding, as the Complaint was submitted in Spanish and the language of the registration agreement for the disputed domain name is English. The Complainant submitted a request for Spanish to be the language of the proceeding on the same April 11, 2022. The Respondent did not comment on the language of the proceeding.

The Center sent an email communication to the Complainant also on April 11, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on April 20, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 12, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on May 20, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is the developer of software solutions for the creation and publication of a wide range of content including graphics, photography, illustration, animation, multimedia/video, motion pictures, and print.

The Complainant is the owner of large number trademarks in many jurisdictions for ADOBE and ADOBE with additional terms, such as the ADOBE Colombian Reg. No. 142702 registered on July 12, 1993 or the ADOBE FLASH Colombian Reg. No. 427608 registered on May 31, 2011.

The disputed domain name was registered on February 10, 2019, and resolved to a pay-per-click ("PPC") website that also offered for sale the disputed domain name for USD 1,500.

5. Parties' Contentions

A. Complainant

The Complainant asserts that ADOBE is a well-known trademark in connection with software products. A "google" search for the term "adobe" comes out with more than 90% of the results showing the Complainant's trademarks and products.

The disputed domain name reproduces in its entirety the ADOBE trademark. Thus, it causes inevitable confusion, which leads to think the consumer that the website at the disputed domain name belongs to the Complainant.

The Respondent does not have rights or legitimate interests on the disputed domain name. Indeed, the website to which the disputed domain name redirects is offering it for sale for valuable consideration in excess of regular registration costs.

The disputed domain name has been registered and is used in bad faith. It is apparent the Respondent registered the disputed domain name in order to sell it for a value much higher than costs directly related to the disputed domain name.

The Complainant also alleges that the Respondent registered the disputed domain name to prevent the Complainant from reflecting the ADOBE mark in the corresponding domain name. In fact, the website to which the domain resolves provides PPC links in connection with competitors of the Complainant. The Respondent's goal was to disturb the Complainant's business and activities. The disputed domain name baits Colombian consumers who are expecting authentic ADOBE products, but are instead redirected to Complainant's competitors' sites. Such a practice is to be considered in bad faith according to the UDRP.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Language of the administrative proceedings

While the registration of the disputed domain name is English, the Complainant has requested Spanish as the language of the proceedings. The Panel notes the Centers “dual language” case-related communications to the parties in English and Spanish.

The Panel looks at [WIPO Overview 3.0](#) section 4.5.1.: “Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.”

The Panel would have accepted a Response in either Spanish or English. However, the Respondent did not submit any response or communication, even considering the fact that the Center sent its email communications in dual language, English and Spanish, and correctly notified the Complaint. Being that as it is, translating the Complaint would cause unnecessary delays and expense to the Complainant, so in the Panel’s view the proceeding was correctly carried out in both languages. Nevertheless, the decision is to be delivered in English in attention to the fact that English was the language used on the registration agreement.

B. Identical or Confusingly Similar

The Complainant has established adequate trademark rights over ADOBE. The test for confusing similarity, then, focus on the comparison between the disputed domain name and the ADOBE trademark. There is no doubt that the ADOBE trademark is fully reproduced in the disputed domain name. See Section 1.7 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The Panel also notes that ccTLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name. See *AB Electrolux c. Alberto Lizcano, Apunto*, WIPO Case No. [DCO2017-0023](#).

Accordingly, the first requirement is met under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) that the Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

[WIPO Overview 3.0](#), section 2.1 says that: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name."

The Complainant limits his allegations to the confusion of the Internet user when accessing to the website and the attempt to sell the disputed domain name for an amount in excess of its regular registration costs.

The Panel has carefully read the case file and concedes that ADOBE is a well-known trademark.

While the term "adobe" is also a dictionary term, the Panel notes that there is no fair use of the disputed domain name connected to a dictionary meaning. On the contrary, the use of the disputed domain name to resolve to a website with PPC links referring to the Complainant, and in some cases redirecting to competitors, cannot be deemed legitimate for the purpose of the Policy. The fact that the disputed domain name was offered for sale on the site displaying the links related to the Complainant also supports that the Respondent probably registered the disputed domain name to obtain a commercial gain due to the identity with the Complainant's ADOBE trademark. Therefore the Respondent, through the disputed domain name, is taking advantage of the well-known nature of the ADOBE trademark to obtain a commercial gain, and consequently is not making a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

It is well established that once the complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interest in the domain name. However, the Respondent did not replied to the Complainant's contentions.

Therefore, the Complainant has met the second element under paragraph 4(a)(ii) of the Policy to the satisfaction of the Panel.

D. Registered and Used in Bad Faith

The UDRP paragraph 4(b) provides non-exclusive scenarios that constitutes evidence of a respondent's bad faith. Besides, section 3.1. [WIPO Overview 3.0](#) considers bad faith under the UDRP as "broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complaint's mark".

Based on the evidence put forward by the Complainant, the Panel concludes that the Respondent knew about the ADOBE trademark and about the Complainant at the moment of the registration of the disputed domain name. Since the products under the ADOBE trademark are extremely popular and the trademark is well-known, it is more likely than not that the Respondent knew about them. Besides, the use of the disputed domain name in connection to PPC links of the Complainant, and redirecting to its competitors confirm the bad faith.

Further, the Panel's finding that the Respondent targeted the ADOBE trademark by registering the disputed domain name, is affirmed by the fact that the Respondent is offering it for sale. The Panel finds that in the circumstances of this case, such offer for sale constitutes bad faith under the Policy paragraph 4(b)(i): "circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name."

Furthermore, the use of a domain name to resolve to a website with PPC links (including redirections to competitors) by a person or entity unrelated with the holder of a trademark is to be considered a use in bad faith. See *Telefonaktiebolaget LM Ericsson v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2022-0851](#).

Moreover, the Panel finds that the Respondent has engaged in a pattern of conduct within the meaning of paragraph 4(b)(ii) of the Policy. See *Boursorama S.A. v. Jun Yin*, WIPO Case No. [DCO2019-0043](#) or *Government Employees Insurance Company ("GEICO") v. Jun Yin*, WIPO Case No. [DCO2020-0037](#).

The Panel concludes that the Complainant has established the third element of the Policy and therefore, the disputed domain name was registered and used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <adobe.com.co> be transferred to the Complainant.

Manuel Moreno-Torres

Manuel Moreno-Torres

Sole Panelist

Date: June 3, 2022